

EXHIBIT 35

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF PUERTO RICO
4 Case No. 17-BK-3283-LTS

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4 In re:
5 THE FINANCIAL OVERSIGHT AND MANAGEMENT
6 BOARD FOR PUERTO RICO,

7 as representative of

8 THE COMMONWEALTH OF PUERTO RICO, et al.,

Debtors.

9 -----x

Case No. 17-BK-4780-LTS

10 -----x

In re:

11 THE FINANCIAL OVERSIGHT AND MANAGEMENT
12 BOARD FOR PUERTO RICO,
13 as representative of
14 THE PUERTO RICO ELECTRIC POWER AUTHORITY,
15 Debtor.

-----x

16 May 16, 2023

9:31 a.m.

17
18 VIDEOTAPED DEPOSITION of DAVID
19 BROWNSTEIN, held at the offices of Kramer
20 Levin Naftalis & Frankel LLP, located at 1177
21 Avenue of the Americas, New York, New York
22 10036, before Anthony Giarro, a Registered
23 Professional Reporter, a Certified Realtime
24 Reporter and a Notary Public of the State of
25 New York.

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2 enforceable claim, but the priority of
3 that claim.

4 Q Other than the dispute over
5 the priority of the fuel line lenders'
6 claim, are you aware of any dispute
7 between the oversight board and the fuel
8 line lenders relating to their claim?

9 MR. MERVIS: On that one,
10 David, at least for the moment,
11 please limit your answer to yes, no
12 or I don't know.

13 A Well, I think your question
14 was, am I aware? So the answer is no.

15 Q As part of your involvement
16 in negotiations leading to the fuel line
17 lenders' PSA, did you do anything to find
18 out whether there was any dispute between
19 the oversight board and the fuel line
20 lenders relating to their claim, other
21 than the issue of priority?

22 A Well, we were settling the
23 litigation, which had to do with whether
24 there were priority over the bondholders;
25 right? And the challenge we were faced

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2 with is we could litigate that out, but
3 until we knew whether they were entitled
4 to priority and what that would mean, we
5 would be unable to fully settle with the
6 bondholders because we didn't know
7 obviously how much cash we had left over.
8 So the goal was to settle with them, so
9 that we could move on to creating a
10 settlement with the bondholders.

11 Q What is your understanding
12 of the fuel line lenders' assertion as to
13 their priority over the bondholders?

14 MS. SPILLANE: Objection to
15 form.

16 MR. MERVIS: I join.

17 A That the fuel line lenders
18 believed that in the priority of
19 payments, because they were named as a
20 portion of where payments go that they
21 had priority, both over the general
22 unsecureds and the bondholders.

23 Q And why did the litigation
24 of that dispute prevent the oversight
25 board from reaching resolution with the

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2 bondholders?

3 MS. SPILLANE: Objection to
4 form.

5 MR. MERVIS: Objection to
6 the form.

7 A You have to know how much
8 money you have available after that
9 settlement or litigation, if you don't
10 have a settlement, in order to find a
11 settlement with the bondholders.

12 Q Had the dispute between the
13 oversight board and the fuel line lenders
14 concerning the fuel line lenders'
15 asserted priority been resolved prior to
16 agreement to the 2019 RSA?

17 A I don't recall.

18 Q Are you aware of any
19 settlement between the oversight board
20 and the fuel line lenders, preceding the
21 agreement to the 2019 RSA?

22 A No. They were part of the
23 2019 RSA. So all of it was developed in
24 one package. But you had their
25 agreement. So you didn't have the

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2 dispute issue to worry about, that they
3 were litigating, and they would take
4 money that belonged to the bondholders in
5 the RSA because then we'd have to cancel
6 the RSA.

7 Q And when you say they would
8 take money that belonged to the
9 bondholders, what do you mean by that?

10 A If they won the litigation
11 and were entitled to first cash flow,
12 were they entitled to 100 cents on the
13 dollar, 100 cents plus accruals or not.
14 And if they were, that would mean based
15 on what we at the time believed we could
16 afford to pay wouldn't have enough money
17 to pay the bondholders what we would have
18 agreed to if we had done them first
19 without knowing the results on the fuel
20 lines.

21 Q If the fuel line lenders in
22 the absence of a settlement were to
23 prevail in their priority litigation,
24 would that require PREPA to pay
25 additional sums in total creditor

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2 recoveries?

3 MS. SPILLANE: Objection to
4 form.

5 A No. As I just said to you,
6 it would have required that we not offer
7 as much to the bondholders.

8 MR. MADDEN: Tab 4 of the
9 binder.

10 (The above-referred-to
11 document was marked as Exhibit 91 for
12 identification, as of this date.)

13 Q Mr. Brownstein, do you
14 recognize the agreement that begins on
15 page 5 of 32 of -- let me take a step
16 back.

17 MR. MADDEN: I didn't mark
18 this. We're going to mark as Exhibit
19 91 a document that is Exhibit M to
20 the disclosure statement, dated
21 March 1, 2023.

22 A Okay.

23 Q And so my question was going
24 to be, Mr. Brownstein, do you recognize
25 the agreement that begins on page 5 of 32

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2 sustainable system.

3 Q Maybe I'm misunderstanding
4 your point then.

5 Do you mean it affects the
6 amount of total cash you would have to
7 pay other creditors?

8 A To pay all creditors, right;
9 you as well as them.

10 Q Right.

11 But it doesn't -- losing the
12 priority litigation doesn't increase or
13 decrease the total amount of cash
14 available to pay all creditors, does it?

15 A No. What it does is it
16 keeps us from settling with you because
17 we don't know how much we have.

18 Q Understood.

19 If you turn in Exhibit 91,
20 there are a number of whereas clauses at
21 the beginning, tab 4 of your binder.
22 It's Exhibit 91.

23 MR. MERVIS: Matt, you want
24 us to start looking at page --

25 MR. MADDEN: Page 2 of the

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2 Q Will the legacy charge
3 itself need to increase to --

4 A -- cover the accrued
5 interest, correct.

6 Q Does the plan of adjustment
7 provide other bondholders an interest
8 accrual through the plan's effective
9 date?

10 MR. MERVIS: Objection to
11 the form.

12 A Subject to PREB approval,
13 the National PSA provides National with
14 one cent --

15 Q I want to try to do these
16 agreements one at a time. So I'm focused
17 here on the fuel line lenders' PSA only.

18 A So your question was, does
19 anyone else?

20 Q I see. I understand the
21 disconnect. Thank you.

22 A We can come to that later.

23 Q No. That's fine.

24 Other than National, which
25 has its own PSA, does the plan of

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2 adjustment provide for interest accrual
3 for any other creditors?

4 A No.

5 Q Why not?

6 MR. MERVIS: Object to the
7 form. But you can answer if you
8 understand.

9 A We're not going to agree to
10 do something like that for people who we
11 don't have a settlement with. There's no
12 reason that we need to do it.

13 Q If you look at the bottom of
14 the plan, the first page of the plan term
15 sheet, there's a box for Series A Bonds.
16 Do you see that?

17 A Yes.

18 Q Why does the plan support
19 agreement limit the Series A Bonds to the
20 fuel line lenders?

21 MR. MERVIS: Object to the
22 form. But you can answer.

23 A So based on the settlement
24 of the priority claim, their bonds are
25 receiving first principal. All bonds

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2 settlement summary in the National PSA,
3 it's at the back.

4 MR. MERVIS: Page 37 of 43.

5 MR. MADDEN: Thank you.

6 A Yes, sir.

7 Q It's page 35 of the
8 agreement, page 37 of 43 of the PDF.

9 I'm looking at the top box.

10 But my question is just,
11 what is the nature of the National bond
12 claim? What is it?

13 A I'm not sure I understand
14 your question.

15 Q Am I right that the National
16 bond claim reflects National's -- what
17 National believes it is owed under the
18 bonds it has insured or owns?

19 MR. MERVIS: Objection to
20 the form.

21 A It is the claim based on
22 their belief that they're entitled to par
23 on the bonds that haven't been paid, plus
24 accrued interest to the petition date.

25 Q And in that respect, is the

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2 National bond claim different in nature
3 from the bond claim asserted by any other
4 PREPA bondholder?

5 MR. MERVIS: Go ahead. I
6 object to the form.

7 A From the asserted bond
8 claim, no, I don't believe so.

9 Q And is the National bond
10 claim different in nature from the
11 asserted bond claim of the PREPA bond
12 trustee?

13 MR. MERVIS: I object to the
14 form.

15 A I don't know what the
16 trustee is saying. So I can't answer
17 that.

18 Q The next box of the
19 settlement summary is titled "Exchange
20 Ratio."

21 You see that?

22 A Yes, sir.

23 Q What does that mean? What
24 does the exchange ratio describe here
25 mean?

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2 71.65 percent exchange ratio?

3 MS. SPILLANE: Objection to
4 form.

5 MR. MERVIS: I object to the
6 form of the question.

7 MR. MADDEN: Let me try it
8 again.

9 Q Given that there are
10 bondholders who have only received an
11 offer of settlement from the oversight
12 board, that's the one in the plan of
13 adjustment, which was a 50 percent
14 exchange ratio, how is the agreement with
15 National to a 71.65 percent exchange
16 ratio on its bond claim fair and
17 reasonable?

18 MS. SPILLANE: Objection to
19 the form.

20 MR. MERVIS: Objection to
21 the form.

22 A What I would tell you is
23 that there's a settlement with National
24 to deal with all the potential
25 litigation. And so the settlement pays

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2 them more than it pays other creditors
3 who can vote for or against the plan.

4 Q Were all PREPA bondholders'
5 claims subject to that pending
6 litigation?

7 MR. MERVIS: I object to the
8 form.

9 A Well, I don't believe --
10 first of all, I don't believe that the
11 other creditors, other than the monoline
12 insurers and potential secondary market
13 purchasers of those bonds, have a
14 reimbursement claim.

15 Second, what National
16 accepted were two additional things.
17 One, that they would not receive a CVI
18 and, Two, that in the event there was
19 excess cash flow that would have gone to
20 settling bondholders through the flow of
21 funds in the plan, they will only receive
22 50 percent on the dollar of what is
23 available to them until the other
24 accepting bondholders get to the same
25 recovery that they have.

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2 National has made to bondholders and for
3 which it seeks reimbursement, does that
4 comprise principal and interest on the
5 insured bonds?

6 A I'm sorry. You need to
7 break that up.

8 Q Okay.

9 Do the sums for which
10 National seeks reimbursement from PREPA
11 include principal it's paid to its
12 insured on account of PREPA bonds?

13 A No. The reimbursement claim
14 is strictly post-petition interest
15 claims.

16 Q Understood. I'm trying to
17 skip ahead.

18 There's a clause in here
19 that begins, "Provided however" under
20 reimbursement claim. This is on page 35
21 of the National PSA. Do you see that?

22 A I see, "Provided further."
23 Is it above that or below that?

24 Q It's above that. There's
25 another underlined, "Provided, however."